

LAW AND THE ART WORLD

Look carefully at arts competition agreements

By Bill Frazier ©2013

I am always concerned when many people and organizations that should know better do not. And then I wonder whether that lack of knowledge or awareness is simply ignorance or something more sinister.

For example, a number of artists, including many who read *State of the Arts*, have been invited to an arts competition sponsored by a national publication. In order to participate in the competition, the artist must pay a fee for each image submitted. In addition, the artist must sign a statement saying, among other things, that he agrees “to allow _____ to publish, republish and repurpose (I do not know what this term means in this context) my artwork in both print and digital formats, including, but not limited to magazines, promotion materials, websites, databases and as part of downloadable digital products.”

Well! It appears that the artist will pay this sponsor a fee to use the images as the sponsor wishes and to create new marketable products. What does the artist get in return? I can see that it would be reasonable for the sponsor to use the images in website and other promotion of the competition and use it for advertising and marketing the competition.

However, I have a problem with the creation of digital products based on the artist’s submissions for which the artist apparently receives no compensation. Am I missing something here?

None of these terms are defined in the materials. Does this agreement authorize the sponsor to publish prints, posters, greeting cards, mugs and other such consumer products? How does any of this have anything to do with an art competition? While it may not be the intention of the sponsoring organization to take advantage of the artist, this seems almost like a license to do with the artwork as it wishes.

I give this example for the purpose of encouraging artist readers to read and understand such solicitations before deciding to participate. This applies to art competitions, auctions, art shows and any other activity requiring images of your work and rights to use your work. Be very careful that you do not inadvertently give away reproduction rights to your artwork when you send an application.

Avoid “take-it-or-leave-it” offers

One artist client called me about a publishing agreement that the publisher termed “take it or leave it.” I advised her to leave it.

Rarely would anything ever need to be “take it or leave it” so avoid such companies and their contracts. These are called contracts of adhesion and should be shunned. Such contracts always favor the side presenting them.

Any contract that is presented as “not subject to negotiation” is essentially the same thing and should generally be rejected. Such contracts are often presented by the unsophisticated and are designed to intimidate the artist. Contracts should be balanced and benefit both parties.

Use caution in hiring agents

All of a sudden, I am getting calls from artists wanting “agents,” and heaven forbid, want me to be the agent. This is an arrangement where I always urge caution. Always be wary about any type of representation or agency agreement, especially where the agent insists upon an exclusive relationship.

I have seen very few cases where the typical artist benefits from having an agent. Typically, the wannabe agent is not qualified nor does he have a background in marketing artwork. Many galleries and most collectors do not like dealing with “agents” or other intermediaries.

Nonetheless, if the artist insists that he needs an agent or representative of some sort, I would most strongly suggest that the artist seek legal counsel in the drafting of any agreement. Agency is another tricky area of the law and terminology may not be as clear as it seems.

By all means avoid do-it-yourself legal drafting and self-help books for this type of contract. These arrangements probably create as much legal controversy and ill will as anything else an artist might do.

Scam of choice for unscrupulous

I reiterate my warning to those of you being contacted by overseas buyers. There has been a proliferation of counterfeit bank and cashiers checks, overpayments and excessive shipping fees involved in purchase scams of artwork. These are usually accompanied with a variety of sob stories and requests for cash



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refunds of overpayments for the artwork and shipping fees.

If you are approached with any one of these situations or variations on the theme, beware and back off. This continues to be a scam of choice for the unscrupulous.

Museum access fees

This museum access issue keeps popping up. The debate continues as to whether a museum owns a copyright to works in its collection. If it does not, what rights does it have relative to the copying and reproduction of artwork in its collection?

When artwork is acquired by a museum, the museum takes the same rights that the owner of the artwork had. If the artwork is one on which the copyright has expired (Remington, for example), the museum receives no copyright and therefore has no authority to prevent others from making copies.

However, there is no legal obligation for the museum to give access to others for the purpose of making reproductions. That is why some museums charge an access fee to those wanting to reproduce or copy the work. It does not own a copyright for which a licensing fee can be charged, so it charges an access fee. Many argue about this practice, but it is perfectly legal.

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Lesson in social networking

One size certainly doesn’t fit all, and that goes double for the content you post across social networks. We found this out through trial and error when it came to re-purposing a recent blog post on LinkedIn and Facebook.

The newsy post went viral on LinkedIn almost immediately, bouncing around from group to group.

And then we checked how the post fared on Facebook. It fizzled. What went wrong?

Reformatted content

When we repurposed the blog post, we didn’t tailor it to the different audience. People on Facebook gravitate to visual content.

So the next week, we created an infographic that summarized the info from the blog post in picture form, and put it up on Facebook.

Score! It got a lot more attention than our first try.

Now we always add a visual – an infographic, photo, etc. – when posting on Facebook.

– Danyell Jones, SVP Marketing, BHM Healthcare Solutions, Lawrence, KS (reprinted with permission from the *Nonprofit Board Report*: 800-220-5000)

Tech Talk: Kickstarting art in Montana

By Mark Ratledge

It always takes money to work as an artist or run a nonprofit, and creative financing is a de rigueur skill in a state like Montana where personal incomes rank 38th in the nation. But there’s an option for pulling together project or organizational funding that’s worth considering: it’s called crowdfunding, and it has been all the rage for a few years now on the web.

What is crowdfunding? It’s gathering funds to do a project by posting an appeal on a website and having individuals around the world make small contributions that add up to a fundraising goal.

Crowdfunding of the low-tech sort has been around for years; think of community organizations raising money going door to door or having bake sales. But crowdfunding on the web has exploded in popularity with the connectivity of the internet.

Crowdfunding grew out of the idea that a crowd of people can be an asset to a project, like Wikipedia, the crowd-sourced online encyclopedia. And all crowd-sourcing on the web is greatly helped with the power of social media, such as Face-

book and Twitter, to raise awareness.

Searching for “crowdfunding” yields a lot of sites, but Kickstarter.com is one of the most popular. Go to kickstarter.com and search for “montana” to see what is happening in the state. In the first part of November, the *Great Falls Tribune* ran the story “From Cooking to Ranching: Crowdfunding Website Brings a Wide Variety of Montana Projects to Market.” Read it at markratledge.com/link/tribune-kickstarter and see how those projects evolved and were marketed to the crowd.

Do you want to try crowdfunding on Kickstarter? First, decide if crowdfunding is right for you. You need to be reasonably proficient in using the web to start a crowdfunding campaign. You should be able to promote yourself over social networking and should set up your own website for your potential funders to view.

If you decide to jump into crowdfunding, read a bunch of Kickstarter projects – both

successful and not – and see how people are organized and how they promoted (or didn’t promote) themselves. Decide if what you

want to do is of statewide interest or national, and promote your project that way. You’re reaching out to people you know and who know you, but you’re reaching out to strangers, too.

Approach your Kickstarter pitch like you would a business plan or a grant application. Are you being realistic? Your Kickstarter campaign and the project itself should be a long-term thing; are you into it for

the long haul? What happens if your project doesn’t get approved by Kickstarter? Or, it gets approved and runs for the time allotted, but doesn’t complete the funding minimum and as a result is cancelled?

But keep in mind that many people out there could help kickstart what you want to do, and crowdfunding could make it work.



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